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## 2010 Decisions

## Opinions of the United States Court of Appeals for the Third Circuit

5-20-2010

# USA v. Arthur Homer Jackson

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 09-2127

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UNITED STATES OF AMERICA

v.

ARTHUR HOMER JACKSON,

Appellant

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On Appeal from the United States District Court  
for the Western District of Pennsylvania  
(D.C. No. 08-cr-00115)  
District Judge: Honorable Terrence F. McVerry

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Submitted Under Third Circuit LAR 34.1(a)  
May 19, 2010

Before: FUENTES, HARDIMAN and NYGAARD, *Circuit Judges*.

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JUDGMENT ORDER

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This cause came on to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on May 19, 2010.

Arthur Homer Jackson appeals his judgment of sentence following his plea of guilty to violating 18 U.S.C. § 922(g)(1). At sentencing, the District Court calculated Jackson's base offense level as 24 in light of § 2K2.1(a)(2) of the United States Sentencing Guidelines (USSG), which adopts the definition of "crime of violence" found

at USSG § 4B1.2(a) . After finding that Jackson's two prior convictions for recklessly endangering another person qualified as crimes of violence under the Guidelines, the District Court did not consider whether Jackson's prior conviction for indecent assault or his two prior convictions for fleeing and eluding police constituted qualifying offenses.

In response to Jackson's brief on appeal, the Government concedes that Jackson's convictions for reckless endangerment are not crimes of violence. *See United States v. Johnson*, 587 F.3d 203, 209-10 (3d Cir. 2009). In light of this concession, the parties have suggested that we remand the case for resentencing. Because we agree with the parties that these questions should first be considered by the District Court, it is hereby

ORDERED and ADJUDGED that the judgment of the United States District Court for the Western District of Pennsylvania entered April 3, 2009, be and the same is hereby VACATED and the case is REMANDED to the United States District Court for the Western District of Pennsylvania. No costs shall be taxed.

BY THE COURT:

/s/Thomas M. Hardiman  
Circuit Judge

ATTEST:

/s/Marcia M. Waldron,  
Clerk

Dated: May 20, 2010